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The Founding of the Tulane Corporate Law Institute

by Louis Y. Fishman

Introduction.

I wrote the following piece, "The Founding of the Tulane Corporate Law Institute," prior to, and to commemorate, the Institute's 30th anniversary. That program was held March 15 and 16, 2018, and set a new record, 702, for registration. As usual, the panels and topics were uniformly outstanding; New Orleans provided her unique charm and, for the most part, great winter weather; and Tulane CLE did its usual outstanding job running such a large event. The Institute is ably co-chaired by Eileen Nugent of Skadden and David Katz of Wachtell Lipton. Eileen and David are from the same outstanding law firms as Joe Flom and Marty Lipton, respectively, who were the first lawyers invited by the Institute's founder, Delaware Supreme Court Justice Andrew Moore, to be panelists at the first Institute in 1988 and many thereafter

The Founding of the Tulane Corporate Law Institute

In 1986, a Tulane Law School alumnus originally from New Orleans was the featured speaker for the school's annual Shell Lecture, and the topic was corporation law. The law school invited a few corporate law practitioners, including me, to a post-lecture dinner at Commander's Palace restaurant, one of New Orleans' best and best known. It was at the lecture and dinner that I was privileged to meet the lecturer, Justice Andrew G. T. Moore, II, of the Delaware Supreme Court.

A few months later, I accepted Tulane Continuing Legal Education's invitation to serve on a planning committee for a corporate law seminar. At our first meeting, John Page, who had also attended the Shell Lecture and dinner and was Justice Moore's classmate at Tulane Law School, suggested that we invite him to participate in the seminar as chair and a speaker. All enthusiastically approved, and the committee then turned to the issue of the topic. The group appeared to favor the topic of choosing the right entity for a new business venture. There were still very few corporate lawyers in New Orleans and even all of Louisiana, and a seminar with a basic topic was more likely to be well-attended. Nevertheless, John and I suggested a different approach, that we choose a topic that would showcase Justice Moore's contribution to the law of mergers and acquisitions, a close relative of corporate law. We thought cases like *Revlon*, which Justice Moore wrote, and *Van Gorkom*, which I later heard, as a rumor, he helped write, might interest the local legal community, and that such a topic could attract national speakers, in addition to Justice Moore, and perhaps even a national audience. The committee finally agreed with John and me, but of course we

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still needed to sign up Justice Moore.

John and I were walking back to our respective offices from the meeting when he suggested we call Justice Moore. John placed the call, we reached Justice Moore, he accepted our invitation, and two things changed immediately: First, "Justice Moore" would thereafter be "Drew," with no exceptions. Second, he would help us attract outstanding speakers. The first two were Marty Lipton and Joe Flom, who require no introduction. The next was Chancellor Bill Allen of the Delaware Court of Chancery, the prestigious trial court for corporate law and certain other disputes in Delaware. Appeals from Chancery go directly to the Delaware Supreme Court. Unlike the Louisiana Supreme Court, where seven justices always sit *en banc*, the Delaware Supreme Court has five justices who are empowered to sit *en banc*, but usually sat in panels of three.

To plan the seminar, Drew invited a New Orleans delegation to Wilmington, where Drew had enlisted, and we met with, one leading corporate practitioner from each of many top Delaware firms. That meeting, at which we discussed topics for individual sessions, was the first step in the planning process. Drew and Betsy Moore were then splendid hosts for dinner at their lovely home. The next morning, we all caught the Metroliner to New York, where we met at Marty's office. Both Marty and Joe attended, as they did for many following years. After the New York session, the various topics were set, and all that was left was inviting additional speakers. It is an understatement to say that most persons invited were delighted to accept. There was one notable exception, a well-known tax lawyer with a great sense of humor whose spouse was (and is) a United States Supreme Court Justice. The lawyer wrote Drew a letter that pointed out that the spouse, "who is in the same business as you are," was a devotee of the Washington, D.C., opera and would not sanction choosing the Corporate Law Institute or anything else over the opening sessions of the opera. From that verdict, neither the lawyer nor we nor even Drew had an appeal.

The Institute was an instant success, with 321 attendees, including around 90 from New Orleans. We had an absolutely outstanding speaker group of sixteen, including Drew, Bill, Marty, and Joe. Not wanting to miss even one second of any of our speakers, we put each of them on every panel. Yes, they all sat in the front of the room in a four-tiered, 4x4 platform, for 15 hours over two days in December 1988. One of the Institute's secrets that will now be partially revealed is that one speaker said absolutely not one word during the entire two days. We continued to plan the Institute annually in the same way, with a preliminary meeting in Wilmington, a fabulous dinner at the Moores' home, and a final planning session in New York that alternated between Marty's office and Joe's office. Then, in 1994, Drew's supreme court term expired, and the planning meeting was held only in New York, where Drew became a senior investment banker, a position he held for the next 10 years. We were blessed to have a succession of outstanding co-Chairs to succeed Drew, who had created and ably chaired the Institute from its inception. Drew remained (and still remains) on the planning committee, but his senior investment banking position in New York, followed by a law partnership in Wilmington, precluded his continued involvement with the Institute at the same level.

Meanwhile, Bill Allen retired as Chancellor and was replaced by William Chandler, who took a very active role in the Institute. But the Court of Chancery's primary role was undertaken by then Vice-Chancellor Jack Jacobs, who generously attended each year the planning session in New York and the seminar in New Orleans. He also taught for several years the session of my corporate governance mini-course at Tulane Law School that met the Wednesday before the Institute's Thursday curtain. Vice-Chancellor Jacobs became Justice Jacobs and attracted Chief Justice Myron Steele to the Institute. Chancellor Chandler retired and was succeeded by Chancellor Leo Strine, who had become an Institute regular as a Vice-Chancellor and remains one now as Chief Justice Strine of the Delaware Supreme Court. Chief Justice Steele and Justice Jacobs have retired from the Court, and Justice Strine continues the link between the Delaware Supreme Court and the Institute, as do, at the Court of Chancery, Chancellor Bouchard and several of the Vice-Chancellors. The Institute could not exist as a nationally recognized institution without its nexus with the Delaware courts.

Fast-forward to late August 2005, when New Orleans had no choice but to welcome a watery visitor named Katrina. Within 36 hours after she left, New Orleans was literally 80% under water. Tulane cancelled its entire first semester, but remarkably opened early in 2006 for the second. The Corporate Law Institute had been scheduled for March 2006. New Orleans was still under water by the time of year planning for the

Institute usually began. The planning committee did not know (nor did anyone else without a crystal ball) whether New Orleans would be ready to host the Institute, whether anyone would come, or even whether Tulane University would survive. It was that serious. The Delaware and New York law firms from which the Institute's planning committee was largely drawn – literally a who's who of firms in those cities– generously stepped up to the plate. The costs associated with producing the Institute were considerable, and Tulane was already under enormous financial pressure. Realizing this, the Delaware and New York firms each pledged to donate up to $15,000 if necessary to cover any losses sustained by the Institute. The next question was "where?" Houston and New York were mentioned, but the planning group and Tulane CLE chose to bet the bank on New Orleans, whose culture and character contributed greatly to the enjoyment of the Institute by speakers and attendees alike. The $15,000 per firm guarantees had allowed the show to go on, but were never needed.

The Tulane Corporate Law Institute might not have survived Katrina without the generous guaranties by the Delaware and New York firms. We will never know for sure. What is important is that it did survive and is a huge success. The 2017 Institute had more than 600 attendees. Lately, attendance has been setting a record each year. And Tulane gets a nice financial dividend from the Institute, which is always welcomed of course, but particularly in this era of declining law school enrollment. As with its nexus with the Delaware judiciary, the Institute could not exist without the support of the New York City, Wilmington, and other firms that provide the Institute's outstanding speakers and frequently do not even seek reimbursement for travel expenses. I would be remiss not to recognize the flawless role of Tulane CLE, which produces the Institute. Judy Melton, now deceased, set a very high standard, which has been matched by each of her successors as head of Tulane CLE. Managing and anticipating the needs of now more than 600 lawyers, and the Institute's VIP faculty, is not an easy task. As one law firm managing partner is reported to have said, "Managing lawyers is like walking through a cemetery: you are over everyone, but no one is listening."

I'll close with an anecdote. Joe Grundfest, the SEC Commissioner and later Stanford Law professor who maintains a website on securities litigation, participated in the first Institute in December 1988. The fate of Marty Lipton's poison pill, technically called a Shareholder Rights Plan, was still in doubt, and the pill was a very hot topic for corporate lawyers. Joe, sitting with Drew, Marty, Joe Flom, and 12 others on the 4x4-tiered panel, introduced his version of the poison pill, which he called the "New, Ultra-Toxic Stock Option Plan." Joe then produced a cardboard sheet that in large letters announced the acronym, NUTSO Plan. The panel and audience roared.

Now you know how the Institute came to be. It will celebrate its 30th anniversary in 2018. I have failed to mention all but two (Joe and Marty) of the lawyers who have made the Institute what it is. I couldn't name even one more without having in good conscience to name them all. Suffice it to say that they are among the very best in the world in their respective practice areas. We've also been blessed to have top investment bankers on each program, from firms like Citigroup, Credit Suisse, Goldman Sachs, Morgan Stanley, and Wasserstein Perella. Tulane and New Orleans will forever be grateful to those professionals, and of course the

Delaware judiciary, past and present, all of whom have contributed so much time and effort to make the Institute what many think is the premier program of its type today.

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